IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 26077 of 2007(Y)

OS.3/2006 of MUNSIFF COURT, MAVELIKKARA

PETITIONERS: PLAINTIFFS:

1. **SOMAN NAIR, S/O.RAGHAVA KURUP, AGED 49, SHOBHA SADANAM, CHATHIYARA MURI, THAMARAKULAM VILLAGE.**
2. **SOBHANAKUMARI, W/O SOMAN NAIR, DO.**

BY ADV. SRI.R.PADMAKUMAR
SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS: DEFENDANTS:

1. **STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, ALAPPUZHA.**
2. **THE REVENUE DIVISIONAL OFFICER, (SUB DIVISIONAL MAGISTRATE) CHENGANNUR.**
3. **THE VILLAGE OFFICER, THAMARAKULAM.**
4. **MURALEEDHARAN PILLAI @ VENU, VANDANAM VEEDU, CHATHIYARA MURI, THAMARAKULAM VILLAGE.**
5. **BAIJU KALASALA, KALA BHAVANAM VEEDU, MEKKUM MURI, DO VILLAGE.**

BY ADV. SRI.S.SHANAVAS KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.26077/2007 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PLAINT O.S.3/06 M.C.MAVELIKKARA.**

EXT.P2: **COPY OF NOTICE DTD. 7/11/06.**

EXT.P3: **COPY OF ACKNOWLEDGEMENT CARD DTD. 9/11/06.**

EXT.P4: **COPY OF I.A.1201/07 IN O.S.3/06 M.C. MAVELIKKARA DTD. 25/06/06.**

EXT.P5: **COPY OF OBJECTION DTD. 31/07/07 TO I.A.**

EXT.P6: **COPY OF ORDER DTD. 14/08/07 M.C. MAVELIKKARA.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 26077 OF 2007

= = = = = = = = = = = = = = =

Dated this the 3rd day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Mavelikkara in I.A.1201/07 in O.S.3/06. It was an application filed by the plaintiff to implead the Panchayat, i.e., Thamarakkulam Grama Panchayat, as additional 6th defendant in the suit. The suit is one for a permanent prohibitory injunction. The President and Vice-President of the Panchayat filed complaint to the 2nd defendant, R.D.O., Chengannur due to personal enmity. Secretary of the Grama Panchayat has not filed any complaint and therefore it is contended by the defendants that since the petition is filed only on the personal capacity of the President and Vice-President, Panchayat need not be dragged into the litigation. On the other hand, the plaintiff would contend that the Panchayat is a necessary party for a just decision. After going through the materials available the Court has found

that the earlier application filed for impleading the Panchayat has been dismissed as not pressed and there is an implied bar to entertain another application for the very same relief and therefore the principles of resjudicata may be applied and so dismissed the application. It is submitted before me that the earlier application was not pressed because it was on account of the factum that the statutory mandate of issuing a notice was not complied with and therefore the impleading at that stage would not have been possible and so did not press it. So it was under such circumstances the petition was not pressed. The Court below relied upon the decision of the Apex Court reported in ***Muhammed Master v. Abdu Haji (1981 KLT 578***). It was a case regarding the election where there was corrupt practices alleged and it was withdrawn. Thereafter it was stated that it cannot be reimposed and therefore there is a bar, especially being an election matter, that too corrupt practices, the Court has to meticulously scrutinize and technicality has to be considered value in such cases. But, here is a case where it was not

voluntarily not pressed. But it was not pressed for the reason that there was a defect of non-issuance of notice which force the plaintiff to not press the application. Therefore, the decision rendered by the Court below can be clearly distinguished and in the nature of contentions between the parties it is only just and equitable that the Panchayat is also made a party and the matter be decided. Therefore, the order under challenge is set aside and the petition for impleading is allowed and the petitioner is directed to carry out the amendment. Needless to say, all the contesting defendants are permitted to file additional written statements in support of their respective contentions.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-